



March 18, 2005

ENGROSSED SENATE BILL No. 213

DIGEST OF SB 213 (Updated March 17, 2005 3:44 pm - DI 92)

Citations Affected: IC 6-2.5; IC 6-3; noncode.

Synopsis: Taxation. Brings Indiana law into conformance with the requirements of the Streamlined Sales and Use Tax Agreement concerning: (1) the definition of tobacco; and (2) monetary allowances given to sellers and certified service providers for collecting sales and use taxes. Allows a partial sales tax exemption for a cargo trailer or a recreational vehicle and a full exemption for an aircraft purchased in Indiana, if it is to be titled or registered for use in another state. For cargo trailers and recreational vehicles, the exemption is equal to the sales tax imposed in Indiana minus the sales tax that would be imposed in the other state if the transaction had occurred in that state. Establishes a \$1,000 adjusted gross income tax deduction for the purchaser of a single family or two family residence constructed with steel framing manufactured in the United States.

Effective: July 1, 2005.

**Young R Michael, Mishler,
Riegsecker, Zakas, Kruse, Landske,
Miller, Alting, Clark**

(HOUSE SPONSORS — FRIEND, MCCLAIN, AYRES)

January 4, 2005, read first time and referred to Committee on Tax and Fiscal Policy.
February 8, 2005, amended, reported favorably — Do Pass.
February 14, 2005, read second time, ordered engrossed.
February 15, 2005, engrossed. Read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 7, 2005, read first time and referred to Committee on Ways and Means.
March 17, 2005, amended, reported — Do Pass.

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March 18, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 213

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-2.5-1-28 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: **Sec. 28. "Tobacco" means cigarettes, cigars, chewing or**
4 **pipe tobacco, or any other item that contains tobacco.**

5 SECTION 2. IC 6-2.5-5-20 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. (a) Sales of food
7 and food ingredients for human consumption are exempt from the state
8 gross retail tax.

9 (b) For purposes of this section, the term "food and food ingredients
10 for human consumption" includes the following items if sold without
11 eating utensils provided by the seller:

12 (1) Food sold by a seller whose proper primary NAICS
13 classification is manufacturing in sector 311, except subsector
14 3118 (bakeries).

15 (2) Food sold in an unheated state by weight or volume as a single
16 item.

17 (3) Bakery items, including bread, rolls, buns, biscuits, bagels,

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croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

(c) Except as otherwise provided by subsection (b), for purposes of this section, the term "food and food ingredients for human consumption" does not include:

- (1) candy;
- (2) alcoholic beverages;
- (3) soft drinks;
- (4) food sold through a vending machine;
- (5) food sold in a heated state or heated by the seller;
- (6) two (2) or more food ingredients mixed or combined by the seller for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); ~~or~~
- (7) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food); ~~or~~
- (8) tobacco.**

SECTION 3. IC 6-2.5-5-39 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 39. (a) As used in this section, "cargo trailer" means a vehicle:**

- (1) without motive power;**
- (2) designed for carrying property; and**
- (3) designed for being drawn by a motor vehicle.**

The term includes pole trailers, boat trailers, utility trailers, semitrailers (as defined in IC 9-13-2-164(a)), and two (2) wheeled homemade trailers.

(b) As used in this section, "recreational vehicle" means a vehicle with or without motive power equipped exclusively for living quarters for persons traveling upon the highways. The term includes a travel trailer, a motor home, a truck camper with a floor and facilities enabling it to be used as a dwelling, and a fifth wheel trailer.

(c) A transaction involving a cargo trailer, a recreational vehicle, or an aircraft is exempt from the state gross retail tax if:

- (1) the purchaser is a nonresident;**
- (2) upon receiving delivery of the cargo trailer, recreational**

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vehicle, or aircraft, the person transports it within thirty (30) days to a destination outside Indiana;

(3) the cargo trailer, recreational vehicle, or aircraft will be titled or registered for use in another state or country; and

(4) the cargo trailer, recreational vehicle, or aircraft will not be titled or registered for use in Indiana.

The amount of the exemption for a cargo trailer or a recreational vehicle is determined in subsection (d).

(d) The amount of the exemption for a cargo trailer or a recreational vehicle under this section is equal to the amount of:

(1) the state gross retail tax that would be imposed on the transaction if the cargo trailer or recreational vehicle were registered in Indiana; minus

(2) the sales, use, or similar tax that would have been imposed on the transaction under the laws of the state in which the purchaser affirms the cargo trailer or recreational vehicle will be registered.

The amount of the exemption under this section may not exceed the amount of the state gross retail tax that would be imposed on the transaction if the cargo trailer or recreational vehicle were registered in Indiana.

(e) Any state gross retail tax due after the application of the exemption provided by this section must be paid to the retail merchant.

(f) A purchaser must claim an exemption under this section by submitting to the retail merchant an affidavit stating the purchaser's intent to:

(1) transport the cargo trailer, recreational vehicle, or aircraft to a destination outside Indiana within thirty (30) days after delivery; and

(2) title or register the cargo trailer, recreational vehicle, or aircraft for use in another state.

The department shall prescribe the form of the affidavit. The affidavit must identify the state in which the cargo trailer, recreational vehicle, or aircraft will be titled or registered. Within sixty (60) days after the date of the transaction, the purchaser shall provide to the retail merchant a copy of the purchaser's title or registration of the cargo trailer, recreational vehicle, or aircraft outside Indiana.

(g) The department shall provide the information necessary to calculate the amount of an exemption claimed under this section to retail merchants in the business of selling cargo trailers or

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recreational vehicles.

SECTION 4. IC 6-2.5-11-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

(d) The department shall allow any monetary allowances that are provided by the member states to sellers or certified service providers in exchange for collecting the sales and use taxes as provided in article VI of the agreement.

SECTION 5. IC 6-3-2-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. (a) As used in this section:

- (1) "steel framing" refers to steel framing manufactured in the United States; and
- (2) "qualifying residence" means a single family or two (2) family residence constructed wholly or partially with steel framing.

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1 (b) For taxable years beginning after December 31, 2005, a
2 resident individual taxpayer is entitled to a deduction from the
3 taxpayer's adjusted gross income for a particular taxable year if,
4 during that taxable year, the taxpayer acquires title to a qualifying
5 residence that the taxpayer purchases from the builder of the
6 qualifying residence.

7 (c) The amount of the deduction under subsection (b) in a
8 particular taxable year is the lesser of:

9 (1) the part of the purchase price of the qualifying residence
10 attributable to the cost of materials for the steel framing; or

11 (2) one thousand dollars (\$1,000).

12 (d) To obtain the deduction provided by this section, the
13 taxpayer must file with the department:

14 (1) proof of the cost of materials for the steel framing; and

15 (2) a list of the persons or businesses that supplied materials
16 for the steel framing.

17 SECTION 6. [EFFECTIVE JULY 1, 2005] IC 6-2.5-5-39, as added
18 by this act, applies to transactions occurring after June 30, 2005.

19 SECTION 7. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Mishler be added as coauthor of Senate Bill 213.

YOUNG R MICHAEL

SENATE MOTION

Madam President: I move that Senators Riegsecker, Zakas, Kruse and Landske be added as coauthors of Senate Bill 213.

YOUNG R MICHAEL

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 213, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 1 through 2 with "[JUNE 1, 2005]".

Page 1, line 3, after "39." insert **"(a) As used in this section, "recreational vehicle" means a vehicle with or without motive power equipped exclusively for living quarters for persons traveling upon the highways. The term includes a travel trailer, a motor home, a truck camper with a floor and facilities enabling it to be used as a dwelling, and a fifth wheel trailer.**

(b)".

Page 1, line 3, delete "motor vehicle, a trailer,".

Page 1, line 4, delete "a watercraft," and insert **"recreational vehicle"**.

Page 1, between lines 5 and 6, begin a new line block indented and insert:

"(1) the purchaser is a nonresident;".

Page 1, line 6, delete "(1)" and insert **"(2)"**.

Page 1, line 6, delete "motor vehicle, trailer,".

Page 1, line 7, delete "watercraft," and insert **"recreational vehicle"**.

Page 1, line 7, delete "immediately".

Page 1, line 7, after "it" insert **"within thirty (30) days"**.

Page 1, line 9, delete "(2) the motor vehicle, trailer, watercraft," and insert **"(3) the recreational vehicle"**.

Page 1, line 11, delete "(3) the motor vehicle, trailer, watercraft," and insert **"(4) the recreational vehicle"**.

Page 1, between lines 12 and 13, begin a new line blocked left and insert:

"The amount of the exemption for a recreational vehicle is determined in subsection (c).

(c) The amount of the exemption for a recreational vehicle under this section is equal to the amount of:

(1) the state gross retail tax that would be imposed on the transaction if the recreational vehicle were registered in Indiana; minus

(2) the sales, use, or similar tax that would have been imposed on the transaction under the laws of the state in which the purchaser affirms the recreational vehicle will be registered.

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The amount of the exemption under this section may not exceed the amount of the state gross retail tax that would be imposed on the transaction if the recreational vehicle were registered in Indiana. A retail merchant that accepts an exemption claim for a recreational vehicle under this section shall, within sixty (60) days after the date of the transaction, have on file a copy of the purchaser's title or registration of the recreational vehicle outside Indiana or pay to the state the amount of the exemption.

(d) Any state gross retail tax due after the application of the exemption provided by this section must be paid to the retail merchant.

(e) A purchaser must claim an exemption under this section by submitting to the retail merchant an affidavit stating the purchaser's intent to:

- (1) transport the recreational vehicle or aircraft to a destination outside Indiana within thirty (30) days after delivery; and
- (2) title or register the recreational vehicle or aircraft for use in another state.

The department shall prescribe the form of the affidavit. The affidavit must identify the state in which the recreational vehicle will be titled or registered. Within sixty (60) days after the date of the transaction, the purchaser shall provide to the retail merchant a copy of the purchaser's title or registration of the recreational vehicle outside Indiana.

(f) The department shall provide the information necessary to calculate the amount of an exemption claimed under this section to retail merchants in the business of selling recreational vehicles."

Page 1, line 14, delete "June 30," and insert "**May 31**,".

Page 1, after line 14, begin a new paragraph and insert:

"SECTION 3. An emergency is declared for this act."

and when so amended that said bill do pass.

(Reference is to SB 213 as introduced.)

KENLEY, Chairperson

Committee Vote: Yeas 11, Nays 0.

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SENATE MOTION

Madam President: I move that Senators Miller, Alting and Clark be added as coauthors of Engrossed Senate Bill 213.

YOUNG R MICHAEL

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 213, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective dates in SECTIONS 1 through 2 with "[EFFECTIVE JULY 1, 2005]".

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-1-28 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 28. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.**

SECTION 2. IC 6-2.5-5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. (a) Sales of food and food ingredients for human consumption are exempt from the state gross retail tax.

(b) For purposes of this section, the term "food and food ingredients for human consumption" includes the following items if sold without eating utensils provided by the seller:

- (1) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).
- (2) Food sold in an unheated state by weight or volume as a single item.
- (3) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

(c) Except as otherwise provided by subsection (b), for purposes of this section, the term "food and food ingredients for human consumption" does not include:

- (1) candy;
- (2) alcoholic beverages;
- (3) soft drinks;
- (4) food sold through a vending machine;
- (5) food sold in a heated state or heated by the seller;
- (6) two (2) or more food ingredients mixed or combined by the seller for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its

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Food Code so as to prevent food borne illnesses); ~~or~~
 (7) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food); ~~or~~
(8) tobacco."

Page 1, line 3, delete ""recreational vehicle"" and insert **""cargo trailer" means a vehicle:**

- (1) without motive power;**
- (2) designed for carrying property; and**
- (3) designed for being drawn by a motor vehicle.**

The term includes pole trailers, boat trailers, utility trailers, semitrailers (as defined in IC 9-13-2-164(a)), and two (2) wheeled homemade trailers."

Page 1, line 4, before "means" begin a new paragraph and insert:
""(b) As used in this section, "recreational vehicle"".

Page 1, line 9, delete "(b)" and insert **"(c)"**.

Page 1, line 9, after "involving" insert **"a cargo trailer,"**.

Page 1, line 9, after "vehicle" insert **",."**

Page 1, line 12, after "the" insert **"cargo trailer,"**.

Page 1, line 12, after "vehicle" insert **",."**

Page 1, line 15, after "the" insert **"cargo trailer,"**.

Page 1, line 15, after "vehicle" insert **",."**

Page 1, line 17, after "the" insert **"cargo trailer,"**.

Page 1, line 17, after "vehicle" insert **",."**

Page 2, line 2, after "for" insert **"a cargo trailer or"**.

Page 2, line 3, delete "(c)." and insert **"(d)." "**

Page 2, line 4, delete "(c)" and insert **"(d)"**.

Page 2, line 4, after "for" insert **"a cargo trailer or"**.

Page 2, line 7, after "the" insert **"cargo trailer or"**.

Page 2, line 11, after "the" insert **"cargo trailer or"**.

Page 2, line 14, after "the" insert **"cargo trailer or"**.

Page 2, delete lines 15 through 19.

Page 2, line 20, delete "(d)" and insert **"(e)"**.

Page 2, line 23, delete "(e)" and insert **"(f)"**.

Page 2, line 26, after "the" insert **"cargo trailer,"**.

Page 2, line 26, after "vehicle" insert **",."**

Page 2, line 29, after "the" insert **"cargo trailer,"**.

Page 2, line 29, after "vehicle" insert **",."**

Page 2, line 32, after "which the" insert **"cargo trailer,"**.

Page 2, line 32, after "vehicle" insert **", or aircraft"**.

Page 2, line 35, after "registration of the" insert **"cargo trailer,"**.

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Page 2, line 36, after "vehicle" insert ", or aircraft".

Page 2, line 37, delete "(f)" and insert "(g)".

Page 2, line 39, after "selling" insert "**cargo trailers or**".

Page 2, between lines 39 and 40, begin a new paragraph and insert:

"SECTION 4. IC 6-2.5-11-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

(d) The department shall allow any monetary allowances that are provided by the member states to sellers or certified service providers in exchange for collecting the sales and use taxes as provided in article VI of the agreement.

SECTION 5. IC 6-3-2-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 20. (a) As used in this section:**

(1) "steel framing" refers to steel framing manufactured in the United States; and

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(2) "qualifying residence" means a single family or two (2) family residence constructed wholly or partially with steel framing.

(b) For taxable years beginning after December 31, 2005, a resident individual taxpayer is entitled to a deduction from the taxpayer's adjusted gross income for a particular taxable year if, during that taxable year, the taxpayer acquires title to a qualifying residence that the taxpayer purchases from the builder of the qualifying residence.

(c) The amount of the deduction under subsection (b) in a particular taxable year is the lesser of:

- (1) the part of the purchase price of the qualifying residence attributable to the cost of materials for the steel framing; or
- (2) one thousand dollars (\$1,000).

(d) To obtain the deduction provided by this section, the taxpayer must file with the department:

- (1) proof of the cost of materials for the steel framing; and
- (2) a list of the persons or businesses that supplied materials for the steel framing."

Page 2, line 41, delete "May 31," and insert "**June 30**,".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 213 as printed February 9, 2005.)

ESPICH, Chair

Committee Vote: yeas 19, nays 2.

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